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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

C.E. APPEAL NO. 246 OF 2006

The Commissioner of Central Excise .. Appellant

Versus

M/s. Colour Chem Ltd. .. Respondent

Mrs. S.V. Bharucha with Mr.K. R. Chaudhary and Mrs. N.V Masurkar for the Appellant.

Mr. Jitu Motwani i/by PDS Legal for Respondents.

CORAM: F.I. REBELLO &
J.P. DEVADHAR, JJ.
DATED: SEPTEMBER 06, 2007

P.C.:

. This is an appeal against the order of the tribunal dated 1.4.2005. In Para 10 it was held as under :

> "After hearing both sides and considering that they agree that no grounds are available to lift the bar of limitation, as per the proviso clause and in the facts and circumstances of the case, this appeal is to be allowed as the demand to be barred by limitation."

. On behalf of the Respondents, their learned counsel points out that in the show cause notice, there is no allegation that the assessee was guilty

of fraud or collusion or wilful misstatement or suppression of facts and in that light there was no question of extending the period of limitation.

. For the purpose of extending limitation, as laid down by the Supreme Court in Kaur & Singh Versus Collector of Central Excise, New Delhi, 1997 (94) E.L.T. 289 (SC), the notice itself must disclose the particulars in respect of fraud or collusion or willful misstatement or suppression of fact or contravention with intention to evade payment of excise duty. There are no such particulars in the show cause notice. We therefore, find that there is no illegality in the order of the tribunal and consequently the question of law as framed would not arise.

. In so far as second question is concerned, the notice was issued after the period of limitation. Hence, second question of law also does not arise. Hence, appeal dismissed.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**